

**Return to:**

## **CONSERVATION EASEMENT DEED**

*(Forestry and Agricultural Model – 1)*

WHEREAS, \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (hereinafter referred to as the “Grantor,” which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, includes the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns) is the owner of certain real property (the “Property”) situate in the City of Concord, County of Merrimack, State of New Hampshire, Tax Map \_\_\_\_\_, Block \_\_\_\_\_, Lot \_\_\_\_\_; and

WHEREAS, the City of Concord, a municipal corporation having its principal place of business at 41 Green Street, Concord, New Hampshire 03301 (the “Grantee”), has established a Conservation Commission pursuant to New Hampshire RSA 36-A; and

WHEREAS, the Grantor desires to grant, release and dedicate in perpetuity to the Grantee, on behalf of the Concord Conservation Commission, a conservation easement (the “Easement”) on the Property, consisting of approximately \_\_\_\_\_ acres, more particularly bounded and described in Exhibit A attached hereto (the “Easement Area”), on the conditions hereinafter specified, for the protection and conservation of the natural resources thereon, and to be enforced by the Grantee; and

WHEREAS, the Grantee agrees by accepting this grant to honor the intention of the Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, be it known that \_\_\_\_\_, for consideration paid, with WARRANTY covenants, does hereby grant, release and dedicate to the City of Concord, acting through its Conservation Commission, a conservation easement (the “Easement”) in perpetuity over the Easement Area as hereinafter set forth.

- 1. PURPOSES.** The Easement hereby granted is pursuant to New Hampshire RSA 477:45-47, exclusively for the following Conservation Purposes:

*[Choose appropriate section(s) from the following and add references to specific natural*

*resource values within each of the following paragraphs:]*

- a. To assure that the Easement Area will be retained forever in its predominantly undeveloped, forested, and open space condition; and
- b. To conserve forests and wetlands for the benefit of native plants and wildlife; and
- c. The protection of the *[unusual]* natural habitat of \_\_\_\_\_ including the enhancement and enlargement of \_\_\_\_\_ acres of protected land which is adjacent to/nearby the Property, said other land including *(name & acreage)**[add specific resource values relevant to this purpose, e.g. identified deer yard, exemplary natural community, etc.]*; and
- d. The preservation of the land and the water body of *(name of water body)* to which it provides access and on which it fronts, subject to the Easement granted hereby for non-motorized outdoor recreation by and/or the education of the general public *[If the easement is intended to provide public access]*; and
- e. The protection of the undeveloped \_\_\_\_\_ feet of water frontage along the *(name of water body)*, to which the Easement Area provides access and upon which it fronts; and
- f. The scenic enjoyment of the general public; *[add specific resource values relevant to this purpose, e.g. # \_\_\_\_\_ feet of undeveloped road frontage]*; and
- g. To provide for low-impact, non-commercial outdoor recreational use by the general public on the Property *[If Easement Area is open to the public]*; and
- h. To preserve the Easement Area as open space for the following public benefits: for the scenic enjoyment of the general public; to maintain, protect, and preserve the property as wildlife habitat; and to preserve and protect the ground and surface water resources on and under the Easement Area; and
- i. To conserve the Property's productive forest land and important forest soils, and to ensure the long-term protection of the Property's capacity to produce economically valuable forest products; and
- j. To conserve the Property's agricultural soils [including prime, statewide and locally important agricultural soils] and agricultural productivity, and to ensure the long-term protection of the Property's capacity to produce economically valuable agricultural products; and
- k. The preservation *[protection]* and conservation of open spaces, particularly the conservation of the productive farm and/or forest land of which the Property consists and of the wildlife habitat thereon *[add specific resource values relevant to this purpose]*, and the long-term protection of the Easement Area's capacity to produce economically valuable agricultural and forestry products *[add specific resource values relevant to this purpose, e.g. soil productivity classification]*; and
- l. The preservation of the historically important land area which is \_\_\_\_\_; and
- m. *[Insert additional purposes, as appropriate]*

The above Purposes are consistent with the clearly delineated open space conservation goals and objectives as stated in the 2030 Master Plan of the City of Concord, adopted on June 18, 2008 which states, “The prosperity, health, welfare and existence of human society is based on the resources provided by a healthy and productive environment . . . . Additional urban and rural development is anticipated, yet Concord residents also desire to preserve for future generations the essential open space qualities that help to make Concord a pleasant and desirable place to live.” The above Purposes are also consistent with New Hampshire RSA 79-A, which states: “It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state’s citizens, maintaining the character of the state’s landscape, and conserving the land, water, forest, agricultural and wildlife resources.”

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

- 2. USE LIMITATIONS.** The Grantor intends that this Easement will confine the use of the Easement Area to such activities as are consistent with the Purposes of this Easement. Any activity on or use of the Easement Area inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following limitations shall apply:
- a. The Easement Area shall not be subdivided or conveyed in any form in separate parcels beyond the subdivision approved by the City of Concord Planning Board on \_\_\_\_\_.
  - b. The Easement Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the capacity of the Easement Area to produce forest and/or agricultural crops shall not be degraded by on-site activities and that such activities will cause neither pollution of surface or ground water nor soil erosion.
    - 1) For the Purposes hereof, “agriculture” and “forestry” shall include animal husbandry, *[equestrian]*, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other access ways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the Purposes of this Easement.
    - 2) Agriculture *[“and forestry”]* shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Easement Area. Agricultural *[“and forestry”]* management activities shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource

conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement, as described in Section 1 above, nor materially impair the scenic quality of the Easement Area as viewed from *[public waterways, great ponds, public roads, or public trails]*.

- c. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, mobile home, utility tower, or wireless communication facility shall be constructed, placed, or introduced onto the Easement Area. However, ancillary structures and improvements which are necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property, and which may include but are not limited to a road, trail, dam, fence, bridge, culvert, barn, or shed, may be constructed, placed, or introduced onto the Easement Area, with the prior written approval of the Concord Conservation Commission provided that they are not detrimental to the Purposes of this Easement.
- d. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands or natural habitats shall be allowed unless such activities are approved by the Concord Conservation Commission and:
  - (1) Are commonly necessary in the accomplishment of the conservation, forestry, agriculture, habitat management, or noncommercial outdoor recreational uses of the Easement Area;
  - (2) Do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification or conservation of such species; and
  - (3) Are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.
- e. No outdoor advertising structures such as signs and billboards shall be located on the Easement Area. *[Provision may be made for outdoor farm stands or pick your own fruits, Christmas trees, and vegetables.]*
- f. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials on the Easement Area, except in connection with any improvements made pursuant to the provisions of sections 2. b., c., or d. above and provided that such activities are not detrimental to the Purposes of this Easement. No such rocks, minerals, gravel, sand, topsoil, or similar materials shall be removed from the Easement Area.
- g. There shall be no storage, dumping, release, injection, burial or burning of man-made materials or materials then known to be hazardous, or disposal of any type of material on the Easement Area.

- h. The Easement Area shall in no way be used to satisfy the density requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
- i. The Grantor shall not grant permission to use all-terrain motorized vehicles, motorbikes, or motorcycles, or any other types of motorized vehicles within the Easement Area. However the Grantor reserves the right to operate and permit the operation of motorized all terrain vehicles solely for the purposes of conducting permitted forestry or wildlife management on the property, or other management activities permitted by this Easement, and for emergency and law enforcement purposes. Furthermore, the Grantor reserves the right, and the right to grant permission to third parties, to ride or use snowmobiles, horses, and non-motorized bicycles for non-commercial recreational purposes. Such recreational uses shall be confined to identified paths or trails, and shall not be detrimental to the Purpose of this Easement.

**3. RESERVED RIGHTS.** All rights not expressly granted herein are reserved to the Grantor. Without limiting the generality of the foregoing, the rights so reserved shall include the right to enter upon, through and across the Easement Area for all purposes not inconsistent with this Easement.

**4. NOTIFICATION OF TRANSFER, TAXES, AND MAINTENANCE.**

- a. Grantor agrees to notify the Grantee in writing at least thirty (30) days before the transfer of title to any part of the Property.
- b. Grantee shall be under no obligation to maintain the Easement Area or pay any taxes or assessments thereon.

**5. BENEFITS, BURDENS, AND ACCESS.**

- a. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity. The benefits of said easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the United States under Section 170 (c)(1) of the United States Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170 (h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the Conservation Purposes of this easement. Any such assignee or transferee shall have like power of assignment or transfer.
- b. The Grantee shall have reasonable access to the Easement Area and all of its parts for such inspection as is necessary to determine compliance and to enforce the easements and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this deed.

- c. The Grantee shall have the right to place signs on the Easement boundaries *[and at trailheads]* for the purposes of identifying it as a conservation easement and land protected by the Grantee.

## **6. BREACH OF EASEMENT**

- a. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach, delivered in hand or by certified mail, return receipt requested.
- b. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to swiftly cure the conditions constituting said breach and prevent future breaches, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- c. If the Grantor fails to take such proper action under the preceding section, the Grantee, its successors or assigns, may undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs and legal fees shall be paid by the said Grantor, provided the said Grantor is determined to be directly or indirectly responsible for the breach.
- d. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Easement Area resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.
- e. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Conservation Purposes of this Easement.

- 7. **NOTICES.** All notices, requests, and other communications required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested, to the appropriate address set forth above or to such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

## **8. DISPUTE RESOLUTION.**

- a. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement Area will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either

party becomes concerned whether any use or activity (which together for the purposes of this Section shall be referred to as the “Activity”) complies with the provisions of this Conservation Easement Deed, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

- b. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, by mutual agreement, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties may agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys’ fees and the costs of mediation shall be split equally between the parties.
- c. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, upon mutual agreement of the parties, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA chapter 542. Each party shall pay its own share of the costs of such arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Conservation Easement.
- d. If the parties do not agree to resolve the disagreement by arbitration, then either party may bring an action at law or in equity in the Merrimack County Superior Court, or its equivalent jurisdictional successor, to enforce the terms of this Easement, and for other relief including for a declaratory judgment, for specific performance of the terms of this Easement, and for such damages as appropriate
- e. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Conservation Easement Deed, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from the Merrimack County Superior Court, or its equivalent jurisdictional successor, to cause the cessation of any such damage or harm, to enforce the terms of this Conservation Easement, to enjoin any violation by permanent injunction, and to require the restoration

of the Property to its condition prior to any breach.

- 8. SEVERABILITY.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award, or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those specifically found to be invalid shall not be affected thereby.

**9. CONDEMNATION.**

- a. Whenever all or any part of the Easement Area is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking, with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- b. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.
- c. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the Conservation Purposes set forth herein.

- 10. ADDITIONAL EASEMENT.** Should the Grantor determine that the express Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the Conservation Purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Paragraph 5.a. above, accepts and records the additional easement.



The Grantee, by accepting and recording this Conservation Easement Deed, for itself, its successors and assigns, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein provided for and incumbent upon the Grantee, all in furtherance of the Conservation Purposes for which this Easement is delivered.

*Executed* on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Duly authorized

The acceptance of this Conservation Easement Deed is made by the City Manager on behalf of the City of Concord by vote of authorization of the City Council on \_\_\_\_\_.

ACCEPTED: City of Concord

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of New Hampshire  
County of Merrimack

Personally appeared \_\_\_\_\_,  
of the City of Concord, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, and  
acknowledged the foregoing on behalf of the City of Concord.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

State of New Hampshire  
County of Merrimack

Personally appeared \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2009, and acknowledged the foregoing to be their voluntary act and deed of the City of Concord, duly authorized.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires:\_\_\_\_\_

## **EXHIBIT A**

[Insert legal description of the Easement Area]